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July 11, 2008

**FINAL RECORD OF DECISION**

|                         |  |
|-------------------------|--|
| PROJECT NAME            | : Hamilton Canal District                    |
| PROJECT MUNICIPALITY    | : Lowell                                     |
| PROJECT WATERSHED       | : Merrimac                                   |
| EOEA NUMBER             | : 14240                                      |
| PROJECT PROPONENT       | : Trinity Hamilton Canal Limited Partnership |
| DATE NOTICED IN MONITOR | : May 7, 2008                                |

Pursuant to the Massachusetts Environmental Policy Act (MEPA) (G.L.c.30, ss. 61-62H) and Section 11.11 of the MEPA regulations (301 CMR 11.00), I have reviewed this project and hereby **grant a Phase I Waiver** to allow commencement of the first phase of the project prior to completion of the Environmental Impact Report (EIR) for the entire project. A Certificate on the Expanded Environmental Notification Form (ENF) with a Scope for the Draft EIR (DEIR) was issued on June 13, 2008.

Project Description

The project as proposed in the Expanded Environmental Notification Form (EENF) consists of a transit-oriented, mixed use development on a 13-acre site in the Hamilton Canal District. The project includes housing, commercial and retail space, restaurants, a theatre, and art gallery, and includes new construction as well as adaptive reuse of historic buildings. The project at full build-out consists of approximately 767,000 gross square feet (gsf) of housing (623 units), 54,800 gsf of retail space, 424,000 gsf commercial spaces and 627,000 gsf of parking (1,964 spaces including a 980-car parking garage). Phase I includes 161 housing units and 50,000 gsf of commercial space.

The project is being designed to meet Leadership in Energy and Environmental Design for Neighborhood Development (LEED-ND) criteria and is designed to be LEED-certifiable. The City of Lowell has partnered with the proponent in developing a Master Plan for the project, which is considered a significant next step in the redevelopment and revitalization of downtown Lowell. The project site includes historic mill buildings associated with former textile

manufacturing operations. It is a brownfields site, which is currently undergoing assessment and remediation in accordance with the Massachusetts Contingency Plan (MCP). The project is located within the boundaries of three historic districts including the Lowell National Historic Park and Preservation District, the Downtown Lowell Historic District and the Locks and Canals Historic District.

The transportation component of the project includes a new four-way intersection and reconfiguration at the Lord Overpass as well as expansion of the existing trolley system, pedestrian linkages and canal walks, a new Jackson Street extension to Thorndike Street, and an extension of Broadway Street across the Merrimack Canal. The project includes new and replacement bridges proposed for construction over the Hamilton and Lower Pawtucket Canals.

### Permits and Jurisdiction

The project is undergoing review and requires the preparation of a mandatory EIR pursuant to Section 11.03 (6)(a)(6) of the MEPA regulations because it will result in generation of 3,000 or more new average daily trips (adt) and Section 11.03 (6)(a)(7) due to construction of 1,000 or more new parking spaces at a single location.

The project is undergoing environmental review pursuant to Section 11.03(1)(b) (3) because it involves conversion of land held for natural resources purposes in accordance with Article 97 of the Amendments to the Constitution of the Commonwealth to any purpose not in accordance with Article 97. The project is also under review pursuant to Section 11.03(1)(b)(7) because it requires approval in accordance with M.G.L. c. 121B of a modification to an existing urban renewal plan; Section 11.03(3)(b)(6) because it involves reconstruction of a pile-supported structure of 2,000 or more square foot (sf) base area that occupies waterways; Section 11.03(10)(b)(1) because it involves demolition of a historic structure located in a Historic District listed in the State Register of Historic Places; and Section 11.03(5)(b)(3)(c) because it involves construction of 1/2 or more miles of new sewer mains.

The proposed project will be reviewed under the Integrated MEPA/Permitting Review pilot process. Permits and approvals required include a MassHighway Access Permit, a Chapter 91 License and Sewer Connection/Extension Permit from the Massachusetts Department of Environmental Protection (MassDEP), an Urban Renewal Plan Amendment from the Department of Housing and Community Development (DHCD), easements from the Department of Conservation and Recreation (DCR) and the Division of Capital Assets and Management (DCAM), and possibly a short-term permit for temporary bridge construction from DCR. Since granting of easements on DCR-owned property constitutes a disposition of land, the project requires legislative approval pursuant to Article 97 of the Massachusetts Constitution. The project is subject to review by the Massachusetts Historic Commission (MHC). The proposed project involves state funding (transportation funding and potentially State Historic Tax Credits). The project is subject to the EEA/MEPA Greenhouse Gas Policy.

The project involves state funding. Therefore, MEPA jurisdiction is broad and extends to all aspects of the project with the potential to cause Damage to the Environment as defined in the MEPA regulations.

### Waiver Request

The proponent is seeking a Waiver for Phase I of the project, which consists of adaptive reuse of the historic Appleton Mill complex for housing (220,000 sf) and the Freudenberg Building for office space (50,000 sf). Phase I also includes construction of a temporary bridge because existing bridges may not be able to support the load of construction vehicles and equipment required.

### Standards for All Waivers

The MEPA regulations at 301 CMR 11.11(1) state that I may waive any provision or requirement in 301 CMR 11.00 not specifically required by MEPA and may impose appropriate and relevant conditions or restrictions, provided that I find that strict compliance with the provision or requirement would:

- (a) result in an undue hardship for the Proponent, unless based on delay in compliance by the Proponent; and
- (b) not serve to avoid or minimize Damage to the Environment.

### Determinations for a Phase 1 Waiver

The MEPA regulations at 301 CMR 11.11(4) state that, in the case of a partial waiver of a mandatory EIR review threshold that will allow the proponent to proceed with Phase 1 of the project prior to preparing an EIR, I shall base the finding required in accordance with 301 CMR 11.11(1)(b) on a determination that:

- (a) the potential environmental impacts of Phase 1, taken alone, are insignificant;
- (b) ample and unconstrained infrastructure facilities and services exist to support Phase 1;
- (c) the project is severable, such that Phase 1 does not require the implementation of any other future phase of the project or restrict the means by which potential environmental impacts from any other phase of the project may be avoided, minimized or mitigated; and
- (d) the agency action(s) on Phase 1 will contain terms such as a condition or restriction, so as to ensure due compliance with MEPA and 301 CMR 11.00 prior to commencement of any other phase of the project.

Based upon the information submitted by the proponent and after consultation with the relevant state agencies, I find that:

- a) Requiring completion of a mandatory EIR prior to Phase I of the project would result in undue hardship for the proponent. Phase I activities include asbestos removal and rehabilitation of existing historic buildings. A delay in implementation of Phase I would prolong the time period for remediation, and could result in further building deterioration. I acknowledge the comments received on the DROD regarding Phase I impacts to an historic building addition that is not deteriorated. While this building addition is not deteriorated, I note that, as a practical matter, the demolition of this structure as part of Phase I appears to be reasonable given that the remainder of the structure will be rehabilitated as part of Phase I.
- b) Requiring completion of a mandatory EIR prior to Phase I of the project would not serve to avoid or minimize Damage to the Environment.
  - 1. The potential environmental impacts of Phase I, taken alone, are insignificant. Phase I alone does not trigger any MEPA thresholds for a mandatory EIR. The proponent has committed to mitigation including replacement land to compensate for disposition of Article 97 land, rehabilitation and reuse of historic buildings, traffic mitigation, and sustainable design.

The project will have an adverse effect on historic properties due to partial demolition of the Freudenberg Building and removal of structural fabric at the Appleton Mills Complex. However, MHC notes in its comment letter that the buildings at the Appleton Mill complex are currently in a state of disrepair and MHC does not object to the Phase I Waiver request.

- 2. Ample and unconstrained infrastructure facilities and services exist to support Phase I. The City of Lowell owns and maintains water mains and sewer lines in the vicinity of the project site. Existing water and sewer mains on-site are considered non-functional and will be abandoned. New water mains to service Phase I and a new wastewater collection system, with sewer lines and lift stations, will be constructed and connected to the municipal system. The City of Lowell has expressed support for the project, including the proposed Phase I.

Phase I is expected to generate 1,460 vehicle trips on an average weekday and 940 trips on an average Saturday. The proponent has proposed mitigation for Phase I impacts consisting of widening at the Middlesex Street westbound approach to the Lord Overpass, restriping of the Lord Overpass and approaching roadways, and retiming of existing traffic signals to optimize overall traffic flow. The analysis in the EENF has demonstrated that upon implementation of the proposed mitigation measures, the existing infrastructure can generally accommodate the traffic associated with Phase I of the project. The Executive Office Transportation and Public Works

(EOTPW) does not object to the granting of a Phase I Waiver.

The Phase I development will use existing bridge infrastructure for pedestrian and vehicle access. However, because existing bridges may not have the capacity to support the load of construction vehicles and equipment, the proponent has proposed to construct a temporary bridge adjacent to the Revere Street Bridge to support Phase I construction.

3. The project is severable, such that Phase I does not require the implementation of any future phase of the project or restrict the means by which other potential environmental impacts from any other phase of the project may be avoided, minimized or mitigated. Phase I asbestos abatement, demolition and new building construction will enable the first phase of development to proceed but does not require the implementation of future development. Based on the information provided in the EENF, including the alternatives analysis and proposed master plan for the site, I am satisfied that Phase I will not restrict the means by which potential environmental impacts from any other phase of the Project may be avoided, minimized, or mitigated. The proponent will be required to prepare an EIR, which will identify measures to avoid and minimize, or mitigate environmental impacts from any other phase of the project.
4. I am satisfied that any Agency Action associated with Phase I will contain terms such as a condition or restriction in a Permit, contract or other relevant document to ensure due compliance with MEPA and 301 CMR 11.00 prior to commencement of any other phase of the project.

I find that the potential environmental impacts of Phase I, taken alone, are insignificant and that damage to the environment will be avoided and minimized, or mitigated, providing the following conditions are met:

- a) The proposed temporary bridge for Phase I construction will require a Chapter 91 License from MassDEP. The proponent should provide additional information to MassDEP identifying the exact location and construction methodologies proposed.
- b) The proponent should consult with DCR regarding the approval process for the temporary bridge. The proponent may apply to DCR for a short-term revocable permit authorizing the construction of a temporary bridge. Alternatively, the granting of a temporary easement for such use would invoke the requirements of Article 97. If a temporary easement is required, the proponent should coordinate with DCR and DCAM regarding the draft legislation and to develop a mitigation plan.
- c) The proponent should consult with MHC regarding adverse effects to historic resources

and provide MHC with additional detail on proposed new construction for the Phase I development.

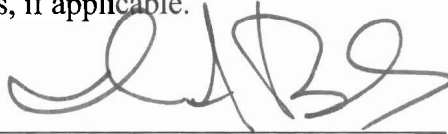
- d) The proponent should ensure that demolition activities are conducted in accordance with MassDEP air quality and solid waste regulations and notification requirements, including requirements for managing asbestos containing materials, as further detailed in the MassDEP comment letter.
- e) The proponent should coordinate closely with state agencies to develop final mitigation plans and provide additional information required for permitting of Phase I.

### Conclusion

I have determined that this waiver request has merit, and issued a Draft Record of Decision (DROD), which was published in the Environmental Monitor on June 25, 2008 in accordance with 301 CMR 11.15(2), which began the public comment period. The public comment period lasted for 14 days and ended on July 9, 2008. Based on written comments received concerning the DROD and consultation with the permitting agencies, I hereby **grant** the waiver requested for this project, which will allow the proponent to proceed with Phase 1 of the project prior to preparing a mandatory Environmental Impact Report (EIR) for the entire project, subject to the above findings, and conditions, if applicable.

July 11, 2008

DATE



Ian A. Bowles, Secretary

### Comments received on the Draft Record of Decision

7/4/08      Stephen Kaiser

### Comments received on the Expanded ENF and Phase I Waiver Request

|         |   |
|---------|---|
| 5/23/08 | Stephen Kaiser  |
| 6/01/08 | Joseph P. Smith   |
| 6/05/08 | Massachusetts Historical Commission                               |
| 6/05/08 | WalkBoston  |
| 6/05/08 | Lowell Downtown Neighborhood Association                          |
| 6/06/08 | Department of Environmental Protection, Northeast Regional Office |
| 6/06/08 | Department of Conservation and Recreation                         |
| 6/06/08 | James T. Lichoulas, Jr.   |
| 6/06/08 | Durkin Realty Trust   |

EEA # 14240

Final ROD

July 11, 2008

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|---------|---|
| 6/06/08 | City of Lowell, Office of the City Manager                          |
| 6/06/08 | Northern Middlesex Council of Governments                           |
| 6/06/08 | Fort Point Associates (on behalf of the proponent)                  |
| 6/09/08 | Executive Office of Transportation, Public/Private Development Unit |
| 6/09/08 | Mark E. Goldman   |

14240 Final ROD

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